

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

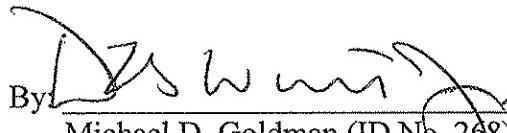
CARLOS EDUARDO LARA ELIAS, )  
                                  )  
Plaintiff,                  )  
                                  )  
v.                             ) C.A. No. 1:07-cv-470 (GMS)  
                                  )  
BAJA CAPITAL PARTNERS, LLC )  
and RICHARD ALBERTI,        )  
                                  )  
Defendants.                 )

**APPLICATION FOR ENTRY OF DEFAULT**

**TO: CLERK OF THE COURT**

Pursuant to Federal Rules of Civil Procedure, Rule 55(a), Plaintiff requests that you enter the default of Baja Capital Partners, LLC and Richard Alberti for failure to appear, answer, plead in or otherwise defend this action, as stated in the Affidavits annexed.

POTTER ANDERSON & CORROON LLP

By   
Michael D. Goldman (ID No. 268)  
Daniel F. Wolcott, Jr. (ID No. 284)  
David E. Moore (ID No. 3983)  
1313 North Market Street- 6th Floor  
P.O. Box 951  
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(302) 984-6000  
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[mgoldman@potteranderson.com](mailto:mgoldman@potteranderson.com)  
[dwolcott@potteranderson.com](mailto:dwolcott@potteranderson.com)  
[dmoore@potteranderson.com](mailto:dmoore@potteranderson.com)

*Attorneys for Plaintiff Carlos Eduardo Lara Elias*

Date: August 21, 2007

OF COUNSEL:

Allen C. Wasserman  
Gregory T. Casamento  
LORD BISSELL & BROOK, LLP  
885 Third Avenue  
New York, New York 10022  
(212) 812-8325

[813822]

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

CARLOS EDUARDO LARA ELIAS, )  
                                  )  
Plaintiff,                  )  
                                  )  
v.                             )       C.A. No. 1:07-cv-470 (GMS)  
                                  )  
BAJA CAPITAL PARTNERS, LLC )  
and RICHARD ALBERTI,        )  
                                  )  
Defendants.                 )

**AFFIDAVIT FOR ENTRY OF DEFAULT  
AND FOR ENTRY OF DEFAULT JUDGMENT**

I, DANIEL F. WOLCOTT, JR., being duly sworn, state as follows:

1. I am an attorney at the law firm of Potter Anderson & Corroon LLP, attorneys for Plaintiff in this action.

2. Pursuant to Fed.R.Civ.P. 4(h), copies of the Complaint and Summons herein were personally served on Defendant Baja Capital Partners, LLC through its registered agent for service, Global Corp. Services, Inc., at 103 Fowler Court, New Castle, Delaware 19720, on July 30, 2007 by personal service of the same. A copy of the affidavit of service on Baja Capital Partners, LLC is attached as Exhibit A.

3. Pursuant to Fed.R.Civ.P. 4(e)(2), copies of the Complaint and Summons herein were personally served on Defendant Richard Alberti, Managing Partner of Baja Capital Partners, LLC, through its registered agent for service, Global Corp. Services, Inc., at 103 Fowler Court, New Castle, Delaware 19720, on July 30, 2007 by personal service of the same. A copy of the affidavit of service on Richard Alberti is attached as Exhibit B.

4. The time within which the above Defendants could plead or otherwise defend this action has expired. Plaintiff has received no Notice of Appearance or any Answer from the Defendants.

5. Pursuant to Fed.R.Civ.P. 55(a), Plaintiff has filed with this Affidavit an Application for Entry of Default against all of the Defendants.

6. Plaintiff seeks an order of replevin for items held by Paul F. Burlingame, the escrow agent of Defendant Baja Capital Partners, LLC, and a declaration that Defendant Richard Alberti comply with a lawful resolution of Baja Capital Partners, LLC requiring Mr. Alberti to return the Certificates of Deposit and related items to Plaintiff, plus Four Hundred Sixty-One Dollars (\$461.00) for the costs of filing the Complaint and serving the Defendants.

7. Pursuant to Local Rule 54.1, attached as Exhibit C is evidence of the costs Plaintiff has incurred for filing the Complaint and serving the Defendants.

8. The Defendant Baja Capital Partners, LLC is not an infant or incompetent, since it is a Delaware limited liability company.

9. The Affidavit of Plaintiff, who personally knows Defendant Richard Alberti (attached as Exhibit D), shows that Richard Alberti is not in the military service of the United States.



DANIEL F. WOLCOTT, JR. (ID No. 284)

SWORN TO and subscribed in my presence  
this 21<sup>st</sup> day of August, 2007.

Rose Marie Anuszewski  
NOTARY PUBLIC  
My commission expires: \_\_\_\_\_

ROSE MARIE ANUSZEWSKI  
NOTARY PUBLIC  
STATE OF DELAWARE  
My Commission Expires March 23, 2008

## **EXHIBIT A**

**Service of Process:**

1:07-cv-00470-UNA Elias v. Baja Capital Partners LLC et al

**U.S. District Court**

**District of Delaware**

**Notice of Electronic Filing**

The following transaction was entered by Moore, David on 8/1/2007 at 11:05 AM EDT and filed on 8/1/2007

**Case Name:** Elias v. Baja Capital Partners LLC et al

**Case Number:** 1:07-cv-470

**Filer:** Carlos Eduardo Lara Elias

**Document Number:** 4

**Docket Text:**

Return of Service Executed by Carlos Eduardo Lara Elias. Baja Capital Partners LLC served on 7/30/2007, answer due 8/20/2007. (Moore, David)

**1:07-cv-470 Notice has been electronically mailed to:**

Daniel F. Wolcott , Jr dwolcott@potteranderson.com

**1:07-cv-470 Notice has been delivered by other means to:**

The following document(s) are associated with this transaction:

**Document description:** Main Document

**Original filename:** n/a

**Electronic document Stamp:**

[STAMP\_dcecfStamp\_ID=1079733196 [Date=8/1/2007] [FileNumber=423460-0]  
[18daf9685be725b9ecc259c3a4082bc0be7d6471dedd924cc48280132c8d5a1967f74  
f6e124257bd90d80f4a03a3b6c6436daa821cd577109fc2df9f01785170]]

UNITED STATES DISTRICT COURT

District of Delaware

CARLOS EDUARDO LARA ELIAS,

Plaintiff,

**SUMMONS IN A CIVIL CASE**

V.

CASE NUMBER:

207-470

BAJA CAPITAL PARTNERS, LLC and  
RICHARD ALBERTI,

Defendants.

TO: (Name and address of Defendant)

BAJA CAPITAL PARTNERS, LLC  
c/o Global Corporate Services, Inc., its registered agent  
103 Fowler Court  
New Castle, Delaware 19720

**YOU ARE HEREBY SUMMONED** and required to serve on PLAINTIFF'S ATTORNEY (name and address)

Daniel F. Wolcott, Jr., Esquire (ID No. 284)  
Potter Anderson & Corroon LLP  
Hercules Plaza--6th Floor  
1313 North Market Street  
Wilmington, Delaware 19801  
(302) 984-6000

an answer to the complaint which is served on you with this summons, within 20 days after service of this summons on you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. Any answer that you serve on the parties to this action must be filed with the Clerk of this Court within a reasonable period of time after service.

**PETER T. DALLEO**

CLERK



(By) DEPUTY CLERK

7/30/07

DATE

AO 440 (Rev. 8/01) Summons in a Civil Action

RETURN OF SERVICE		
Service of the Summons and complaint was made by me <sup>(1)</sup>	DATE	7/30/07
NAME OF SERVER (PRINT) Paul Coulby	TITLE	Process Server
Check one box below to indicate appropriate method of service		
<input type="checkbox"/> Served personally upon the defendant. Place where served: _____		
<input type="checkbox"/> Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein. Name of person with whom the summons and complaint were left: _____		
<input type="checkbox"/> Returned unexecuted: _____		
<input checked="" type="checkbox"/> Other (specify): PERSONALLY SERVED BAJA CAPITAL PARTNERS, LLC C/O GLOBAL CORP SERVICES, INC AT 103 FOWLER CT, NEW CASTLE, DE 19720 AT 4:50 PM PERSON ACCEPTING: AMANDA KENNY		
STATEMENT OF SERVICE FEES		
TRAVEL	SERVICES	TOTAL
DECLARATION OF SERVER		
I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.		
Executed on <u>7/30/07</u> Date	<u>Paul H. Coulby</u> <small>Signature of Server</small>	
<u>230 N MARKET ST, WILM DE 19801</u> <small>Address of Server</small>		

(1) As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure.

## **EXHIBIT B**

**Service of Process:**1:07-cv-00470-UNA Elias v. Baja Capital Partners LLC et al**U.S. District Court****District of Delaware****Notice of Electronic Filing**

The following transaction was entered by Moore, David on 8/1/2007 at 11:04 AM EDT and filed on 8/1/2007

**Case Name:** Elias v. Baja Capital Partners LLC et al

**Case Number:** 1:07-cv-470

**Filer:** Carlos Eduardo Lara Elias

**Document Number:** 3

**Docket Text:**

Return of Service Executed by Carlos Eduardo Lara Elias. Richard Alberti served on 7/30/2007, answer due 8/20/2007. (Moore, David)

**1:07-cv-470 Notice has been electronically mailed to:**

Daniel F. Wolcott , Jr dwolcott@potteranderson.com

**1:07-cv-470 Notice has been delivered by other means to:**

The following document(s) are associated with this transaction:

**Document description:** Main Document

**Original filename:** n/a

**Electronic document Stamp:**

[STAMP\_dcecfStamp\_ID=1079733196 [Date=8/1/2007] [FileNumber=423457-0]  
[2985ff918a8a240495ef998cecb14ac12635c44bfc5145a8a2303a0a44128aad8f0d1  
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## UNITED STATES DISTRICT COURT

District of Delaware

CARLOS EDUARDO LARA ELIAS,

Plaintiff,

**SUMMONS IN A CIVIL CASE**

V.

CASE NUMBER:

- 07 470

BAJA CAPITAL PARTNERS, LLC and  
RICHARD ALBERTI,

Defendants.

TO: (Name and address of Defendant)

RICHARD ALBERTI as managing Member of  
 Baja Capital Partners, LLC  
 c/o Global Corporate Services, Inc., its registered agent  
 103 Fowler Court  
 New Castle, Delaware 19720 \*pursuant to 6 Del. C. Section 18-109

**YOU ARE HEREBY SUMMONED** and required to serve on PLAINTIFF'S ATTORNEY (name and address)

Daniel F. Wolcott, Jr., Esquire (ID No. 284)  
 Potter Anderson & Corroon LLP  
 Hercules Plaza--6th Floor  
 1313 North Market Street  
 Wilmington, Delaware 19801  
 (302) 984-6000

an answer to the complaint which is served on you with this summons, within 20 days after service of this summons on you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. Any answer that you serve on the parties to this action must be filed with the Clerk of this Court within a reasonable period of time after service.

**PETER T. DALLEO**

7/30/07

CLERK

DATE

(By) DEPUTY CLERK

AO 440 (Rev. 8/01) Summons in a Civil Action

RETURN OF SERVICE		
Service of the Summons and complaint was made by me <sup>(1)</sup>	DATE	7/30/07
NAME OF SERVER (PRINT) Paul Coulby	TITLE	PROCESS SERVER
Check one box below to indicate appropriate method of service		
<input type="checkbox"/> Served personally upon the defendant. Place where served: _____		
<input type="checkbox"/> Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein. Name of person with whom the summons and complaint were left: _____		
<input type="checkbox"/> Returned unexecuted: _____		
<input checked="" type="checkbox"/> Other (specify): PERSONALLY SERVED RICHARD ALBERTI AS MANAGING MEMBER OF BAJA CAPITAL PARTNERS, LLC C/O GLOBAL CORP SERVICES AT 103 FOWLER CT NEW CASTLE, DE 19720 AT 4:50PM PERSON ACCEPTING: AMANDA KENNY		
STATEMENT OF SERVICE FEES		
TRAVEL	SERVICES	TOTAL
DECLARATION OF SERVER		
I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.		
Executed on <u>7/30/07</u> Date	<u>Paul H Coulby</u> <small>Signature of Server</small>	
<u>230 N MARCET ST, WILM DE 19801</u> <small>Address of Server</small>		

(1) As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure.

## **EXHIBIT C**

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

CARLOS EDUARDO LARA ELIAS, )  
                                  )  
                                  )  
Plaintiff,                  )  
                                  )  
                                  )  
v.                             )       C.A. No. 1:07-cv-470 (GMS)  
                                  )  
                                  )  
BAJA CAPITAL PARTNERS, LLC )  
and RICHARD ALBERTI,        )  
                                  )  
                                  )  
Defendants.                 )

**EXHIBIT C TO  
AFFIDAVIT OF DANIEL F. WOLCOTT, JR.  
FOR ENTRY OF DEFAULT AND FOR ENTRY OF DEFAULT JUDGMENT**

Costs of Filing Complaint and Service of Complaint Upon Defendants

District Court filing fee                                   \$350.00

Service of Complaint upon Defendants                      \$111.00  
Baja Capital Partners, LLC and Richard Alberti

**TOTAL:**   \$461.00

## **EXHIBIT D**

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

CARLOS EDUARDO LARA ELIAS, )  
Plaintiff, ) AFFIDAVIT FOR ENTRY OF  
v. ) DEFAULT AND FOR ENTRY OF  
BAJA CAPITAL PARTNERS, LLC, AND ) DEFAULT JUDGMENT  
RICHARD ALBERTI ) Case No. 07 CV 470  
Defendants. )

I, Carlos Eduardo Lara Elias, being duly sworn, state as follows:

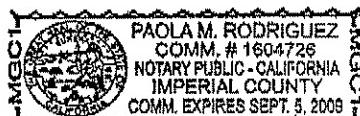
1. I am the plaintiff in this action.
2. I personally have known the Defendant Richard Alberti since October of 2005.
3. To the best of my knowledge, Mr. Alberti is not an incompetent, or, to my knowledge, in the military service of the United States.

Carlos Eduardo Lara Elias

Carlos Eduardo Lara Elias

STATE OF CALIFORNIA )  
COUNTY OF IMPERIAL ) SS.:  
                                )

On the 21 day of August, 2007, before me personally came Carlos Eduardo Lara Elias, to me known to be the individual described in and who executed the foregoing instrument, and acknowledged that he executed said instrument.



Paola M. Rodriguez  
Notary Public  
My commission expires on SEPT. 05, 2009.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

CARLOS EDUARDO LARA ELIAS, )  
                                  )  
Plaintiff,                  )  
                                  )  
v.                             )       C.A. No. 1:07-cv-470 (GMS)  
                                  )  
BAJA CAPITAL PARTNERS, LLC )  
and RICHARD ALBERTI,        )  
                                  )  
Defendants.                 )

**ENTRY OF DEFAULT**

Plaintiff has requested that default be entered against Defendants Baja Capital Partners, LLC and Richard Alberti, and said Defendants have failed to appear, answer, plead in or otherwise defend this action.

IT IS ORDERED that default is entered against the Defendants.

Date: \_\_\_\_\_

\_\_\_\_\_  
**CLERK**

By: \_\_\_\_\_  
**DEPUTY CLERK**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

CARLOS EDUARDO LARA ELIAS, )  
                                )  
                                )  
Plaintiff,                 )  
                                )  
                                )  
v.                             )                              C.A. No. 1:07-cv-470 (GMS)  
                                )  
BAJA CAPITAL PARTNERS, LLC )  
and RICHARD ALBERTI,        )  
                                )  
                                )  
Defendants.                 )

**DEFAULT JUDGMENT BY CLERK**

Defendants Baja Capital Partners, LLC and Richard Alberti have failed to appear, answer, plead in or otherwise defend this action, and default has been entered. Plaintiff requested default judgment against said Defendants pursuant to Fed.R.Civ.P. 55(b)(1), and alleged in his Complaint that the escrow agent of Defendant Baja Capital Partners, LLC is wrongfully holding Plaintiff Carlos Eduardo Lara Elias' possessions, namely Certificates of Deposit ("CDs") and related documents, in a safe deposit, and demanding that Defendant Richard Albert comply with a lawful resolution of Baja Capital Partners, LLC to return the CDs and related documents. None of said Defendants is an infant, incompetent, or in the military service of the United States.

IT IS ORDERED that Plaintiff recover from Defendants Baja Capital Partners, LLC and Richard Alberti, jointly and severally, the following documents being held by Paul Burlingame as escrow agent for Defendants:

1.     Bancomer Certificate of Deposit #7921536 (\$50,000,000 pesos) contained in a binder;
2.     Bancomer Certificate of Deposit #287930 (\$6,000,000 pesos) contained in a binder;

3. Bancomer Certificate of Deposit # 388765 (\$1,500,000 pesos) contained in a binder;
4. Three (3) blue binders;
5. Three (3) white binders;
6. One (1) large binder; and
7. All other documents being held pursuant to the escrow agreement between Baja Capital Partners, LLC And Paul F. Burlingame as escrow agent.

IT IS ORDERED that Defendant Richard Alberti comply with the resolution of Baja Capital Partners, LLC and facilitate the return of the CDs and related documents to Plaintiff.

IT IS ORDERED that Defendants Baja Capital Partners, LLC and Richard Alberti, jointly and severally, shall pay court costs in the amount of Four Hundred Sixty-One Dollars (\$461.00).

Date: \_\_\_\_\_  
CLERK

By: \_\_\_\_\_  
DEPUTY CLERK